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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 163

NORTH SIDE LAUNDRY COMPANY,
Appellant,

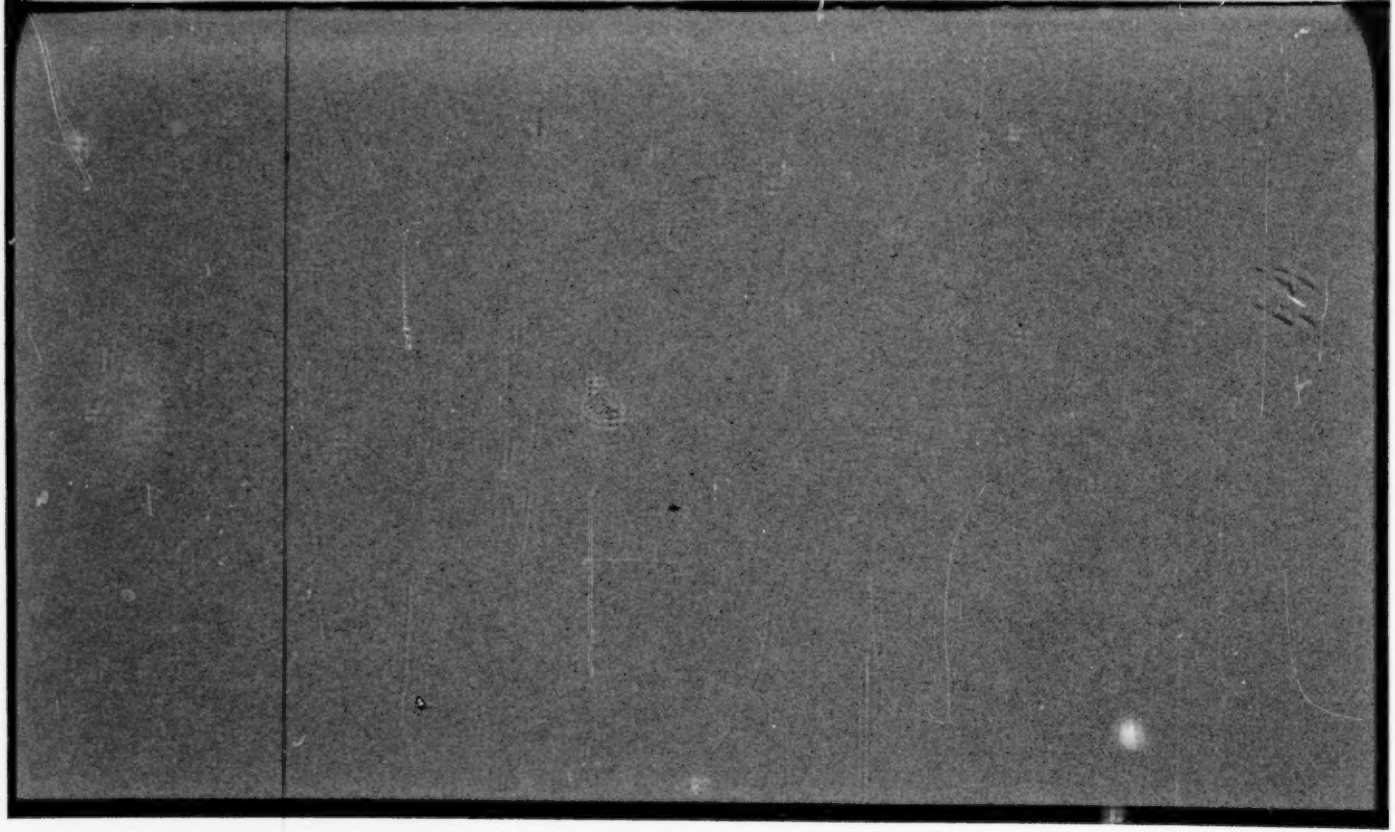
vs.

BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW, ALLEGHENY COUNTY

APPEAL FROM THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

STATEMENT AS TO JURISDICTION

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Counsel for Appellant.



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 163

NORTH SIDE LAUNDRY COMPANY, A CORPORATION,
Appellant,

vs.

BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW, ALLEGHENY COUNTY

STATEMENT AS TO JURISDICTION

The North Side Laundry Company, pursuant to Rule 12 of the Rules of the Supreme Court of the United States, files this statement which discloses the basis on which it contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment entered by the Supreme Court of Pennsylvania in the above entitled case.

Opinion Below

The Supreme Court of Pennsylvania filed a written opinion which is reported at *366 Pa. 636* (a copy of said opinion is attached hereto as Appendix "A.") The opinion and order appealed from was filed on March 19, 1951, and this application for appeal to the Supreme Court of the United States was presented on June 4, 1951, within the time allowed for appeal. *Title 28 U.S.C. 2101.*

Statute Conferring Jurisdiction

The jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code, as amended, *28 U.S.C. 1257* (Par. 2) which provides that final judgments of state courts may be reviewed by the Supreme Court "by appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution . . . and the decision is in favor of its validity."

State Statute Involved

This case draws in question the validity of the County Assessment Law of the Commonwealth of Pennsylvania, Act of 1933, P. L. 853, as amended by the Act of 1941, P. L. 219, 72 P.S. 5020-201, which provides:

> "The following subjects and property shall as hereinafter provided, be valued and assessed, and subject to taxation for all county, city, borough, town, township, school and poor purposes at the annual rate:
>
> "(a) All real estate to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries and ferries, wharves, and all other real estate not exempt by law from taxation."

The Appellant contended throughout the course of this litigation in the state courts that this Act, as construed, violated the Federal Constitution, but the decision of the Supreme Court of Pennsylvania upholds its validity.

Constitutional Provision Involved

The Appellant invokes the protection of that portion of Article XIV, Section 1, of the Constitution of the United States which provides:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

This is an appeal by the North Side Laundry Company from the Allegheny County tax assessment for the triennial years 1948, 1949 and 1950.

The Board of Property Assessment, Appeals and Review of Allegheny County, Pennsylvania, in assessing the real estate of the North Side Laundry Company for the triennial assessment for 1945, 1946 and 1947 included as a subject of taxation "machinery and equipment." The machinery and equipment assessed was personalty, unattached to the freehold, consisting of ironers, tumblers, driers, washers, extractors, pressers and other equipment required in laundering clothing. The assessment was made under the provision of the Pennsylvania Act of 1933, P. L. 853, as amended by the Act of 1941, P. L. 219, 72 P.S. 5020-201, which provides:

> "The following subjects and property shall, as hereinafter provided, be valued and assessed and subject to taxation . . .
>
> "(a) All real estate to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fish-

eries and ferries, wharves, and *all other real estate* not exempt by law from taxation . . ." (Emphasis supplied.)

The North Side Laundry Company appealed from this assessment and the Court of Common Pleas of Allegheny County sustained the appeal and set aside the assessment on "machinery and equipment." The Pennsylvania Superior Court affirmed the judgment of the Common Pleas Court and stated: "Only such property as the statute described can be made the subject of assessment. There is no such thing as taxation by implication:" *161 Pa. Superior Ct. 412, 54 A. 2d 912* (1947). On April 22, 1948, the Supreme Court of Pennsylvania in a five to two decision reversed the Order of the Superior Court and reinstated the assessment upon "machinery and equipment." *United Laundries, Inc., et al.* v. *Board of Property Assessment, Appeals & Review,* 359 Pa. 195, 58 A. 2d 833 (1948). The Court found that the petitioners' laundry was not a mill or manufactory and obviously did not fall under the other statutory classifications. However, the Court applied the so-called "assembled industrial plant doctrine" to the laundry's personal property and held that it was taxable as "*all other real estate.*" Two Justices dissented on the ground that the Act did not say this.

At this point, the North Side Laundry Company for the first time attempted to raise the Federal question. It petitioned the court for a reargument, alleging that the statute, as construed, denied to it the equal protection of law as provided by the 14th Amendment of the United States Constitution. The court denied this petition and refused to allow an appeal to the Supreme Court of the United States.

During the course of the above litigation the Board assessed the North Side Laundry Company for the triennial 1948, 1949 and 1950 and again included "machinery and

equipment" as real estate. Of the $55,015 assessment made, $25,950 was for machinery.

On July 28, 1948, the North Side Laundry Company appealed from this assessment to the Court of Common Pleas of Allegheny County alleging:

That the Act of 1933, under which the assessment was made, violated the 14th Amendment to the Federal Constitution (R. 5a-6a);

That the Board's plan of assessment under the Act of 1933, as construed by the court, whereby the chattels of the North Side Laundry Company were assessed as real estate and similar chattels of other property owners were not assessed, constituted an intentional systematic undervaluation of taxable property of the same class (R. 5a).

At the hearing the petitioner offered to prove:

That the "machinery and equipment" of the North Side Laundry Company, which was assessed as real estate, consisted of ironers, tumblers, driers, washers, extractors, pressers and other equipment required in laundering clothing, none of which personalty was attached to the freehold so as to become a fixture (R. 28a);

That there were many service industries in Allegheny County, all of which require considerable machinery and equipment in order to operate as an industry, such as theaters, cab companies, service stations, automobile repair companies, restaurants, clothing stores, jewelry stores, department stores, office buildings, frozen food locker companies, hotels, beauty shops, banks, and self-service laundries (R. 13a-27a); and

That the Board had not assessed the machinery and equipment in those industries although their machinery is just essential to their operation as the washers, driers, etc., are to the North Side Laundry Company *which are assessed* (R. 13a-27a).

The court refused to let the plaintiff prove these allegations on the grounds that this evidence was incompetent, irrelevant and immaterial in the light of the *United Laundries* case, *supra,* and dismissed the appeal (R. 27a-28a).

On November 20, 1951, the Superior Court of Pennsylvania affirmed the judgment of the Allegheny County Court and dismissed the appeal, but because of the importance of the questions involved, certified the case to the Supreme Court of Pennsylvania (R. 44a).

On March 19, 1951, the Supreme Court of Pennsylvania sustained the lower courts' decisions and dismissed the appeal. (A copy of the opinion is attached as Appendix "A").

On March 29, 1951, the Appellant filed a petition for reargument which was refused by the Court on April 9, 1951, and this appeal was presented on June 4, 1951.

Questions Presented

1. Does the Pennsylvania County Assessment Law violate the equal protection clause of the 14th Amendment to the Federal Constitution, when, as construed by the courts, it permits the assessment of a laundry's machinery and equipment as real estate and does not require the assessment of similar machinery and equipment in other service industries?

2. Was it error for the Pennsylvania courts to exclude evidence offered by the Appellant on the grounds that it was incompetent, irrelevant and immaterial when such evidence showed that the personal property of the Appellant was assessed as real estate while personal property of other service industries was not so assessed?

3. Has the Appellant been denied equal protection of the law contrary to the 14th Amendment when its machinery and equipment has been assessed for taxation as real estate

and similar machinery and equipment of other service industries has not been so assessed?

How Federal Questions Were Raised

At the outset of these proceedings the North Side Laundry Company raised the federal question of discrimination in the real estate assessment for 1948, 1949 and 1950. On July 29, 1948, North Side Laundry Company filed its appeal from the assessment in the Common Pleas Court of Allegheny County. The federal question of discrimination was raised in Paragraph Sixth of Appellant's Petition which reads:

> "SIXTH: The Board's plan of assessment, by virtue of which Petitioner's chattels are assessed as real estate, is an intentional, systematic undervaluation by the Board of taxable property of the same class belonging to other owners, in that chattels similar in nature to those of your Petitioner, owned, held, and/or used by other similarly circumstanced taxpayers located in Allegheny County are not assessed as real estate." (R. 5a).

And the question of the constitutionality of the Act of 1933 was raised in Paragraph Seventh which reads:

> "SEVENTH: The assessment in question is illegal, void and contrary to law in that:
>
> "(a) It assesses said chattels of Petitioner as real estate.
>
> "(b) It is in violation of the Constitution of Pennsylvania and the Constitution of the United States of America.
>
> "(c) The Act of May 22, 1933, P. L. 853 (72 P.S. Section 5020-1 et seq.) and particularly Section 201 thereof, as last amended (72 P.S. Supp. Section 5020-201), construed by the Supreme Court of Pennsylvania in the Brighton Laundry appeal (359 Pa. 195), under

which said assessment was made, is in violation of the Pennsylvania Constitution and the Constitution of the United States." (R. 5a-6a).

At the hearing in the trial court Appellant offered evidence to prove that the assessment of the Appellant's machinery and equipment was discriminatory and unconstitutional (R. 13a-28a). The trial court excluded this evidence as incompetent, irrelevant and immaterial (R. 27a-28a). The opinion filed by the hearing judge clearly indicates that the Appellant attacked the constitutionality of the Act of 1933 and that the court sustained is validity. (R. 30a-31a.)

Appellant filed exceptions to the trial judge's decision raising the federal questions in the "First" (R. 32a) and the "Fifth" (R. 35a) exceptions.

The Court of Common Pleas of Allegheny County affirmed the trial judge's decision and dismissed Appellant's exceptions (R. 37a-43a).

The same federal questions were raised by the Appellant in its appeal to the Superior Court of Pennsylvania. The Superior Court affirmed the decision of the Common Pleas Court, but because of the importance of the questions involved, certified the case to the Supreme Court of Pennsylvania (R. 44a-45a).

In the Supreme Court the Appellant asserted that the Assessment Law violated the 14th Amendment to the Federal Constitution because the Act, as construed by the courts, permitted the assessment of the personal property of a laundry as real estate for the purposes of taxation and did not require the personal property of other similar industries to be likewise assessed. Appellant contended that this resulted in an intentional, systematic undervaluation of other property of the same class as Appellant's which is clearly discrimination prohibited by the Consti-

tution of the United States (Pages 9-28 of Appellant's Brief). The Supreme Court, in affirming the lower court's dismissal of the appeal, determined the federal questions presented. It held that the personal property of a laundry was taxable as real estate because a laundry was an industrial plant and the personal property of the other service industries listed in Appellant's offer was not taxable because the other service industries were not industrial plants. On Page 4 of its opinion the court stated: "The assessment by the Board is in accordance with the Constitution of the United States, . . . Plaintiff's appeal was, therefore, properly dismissed."

Federal Questions Are Substantial

Section 1257 of Title 28 of U.S.C. provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Appellant respectfully submits that the case at bar falls squarely within Paragraph (2) of the above Act and, by the law repeatedly pronounced by the Supreme Court of the United States, this case is properly reviewable by appeal to said Court.

Throughout this entire litigation and through the highest court of the Commonwealth of Pennsylvania the Appellant has asserted, in accordance with the Pennsylvania procedure, that the Pennsylvania County Assessment Law of

1933 violates the equal protection clause of the 14th Amendment to the Federal Constitution because:

1. The *washing machines* in the Appellant's laundry are assessed as real estate while the *washing machines* in self-service laundries are not assessed;

2. The *sewing machines* in the Appellant's laundry, which are used to replace buttons on laundered clothes, are assessed as real estate while the sewing machines in clothing stores, necessary for the alteration of clothes are not assessed.

3. The *pressers* in Appellant's laundry as assessed as real estate while identical pressers in hotels are not assessed;

4. The dish washing machines, ice boxes, deep freezes and other equipment necessary for the operation of restaurants are not assessed as real estate while the machinery necessary for the operation of a laundry is assessed;

5. The motion picture machines, projectors, sound machines and other equipment necessary for the operation of theaters are not assessed as real estate while the machinery necessary for the operation of a laundry is assessed; and

6. Lathes, pressers, jacks, compressors and other equipment necessary for the operation of automobile repair industries are not assessed as real estate while the machinery necessary for the operation of a laundry is assessed.

(There are numerous other service industries whose machinery and equipment is not assessed as real estate cited in Appellant's offer (R. 15a-27a).

Such discrimination in the tax legislation of state governments has been repeatedly struck down by the Supreme Court of the United States. "The purpose of the equal protection clause of the 14th Amendment is to secure to every person within the state's jurisdiction against intentional and arbitrary discrimination, . . ." *Sunday Lake*

Iron Co. v. *Wakefield Twp.*, 247 U. S. 350 (1917); *Sioux City Bridge Co.* v. *Dakota County, Neb.*, 260 U. S. 441 (1923); *Cumberland Coal Co.* v. *Board of Tax Revision*, 284 U. S. 23 (1931); *Iowa-Des Moines Natl. Bank* v. *Bennett*, 284 U. S. 239 (1931); *Hillsborough Twp.* v. *Cromwell*, 326 U. S. 620 (1945); *Ohio Oil Co.* v. *Conway*, 281 U. S. 146 (1929); *Concordia Fire Ins. Co.* v. *Ill.*, 292 U. S. 535 (1934); and *Wheeling Steel Corp.* v. *Glander*, 337 U. S. 580 (1949).

The Appellant contends that the Commonwealth of Pennsylvania has violated those federal rights which are protected by the above cases.

Throughout the litigation in the various state courts the North Side Laundry Company asserted that the Act of 1933, as construed by the Pennsylvania courts not only violated the Federal Constitution but violated the Constitution of Pennsylvania as well. The Supreme Court of Pennsylvania held that the assessment did not violate the State Constitution and was "in accordance with the Constitution of the United States." From the record which was before that court it is clear that the federal questions were properly presented to that court and the court's decision is squarely based upon the federal ground. From the very nature of the proceedings before that court and its written decision which determined the questions presented by their merits, that is *no adequate non-federal ground* which will support the court's decision.

The court held that the assessment was in accordance with the Federal Constitution on the grounds that the machinery and equipment in the various service industries included in the Appellant's offer was not the same as the machinery and equipment in Appellant's laundry.

The court held that a laundry was not a mill or manufactory nor was it included in the other classifications in the Act of 1933; but the court applied the so-called "assembled industrial plant doctrine" of Pennsylvania to the laundry

and held that its machinery and equipment was part of the real estate by virtue of that doctrine. It further held that the words of the Act, "All other real estate" meant all industrial plants and their machinery and equipment. In denying the discrimination claim, the court held that the laundry was an industrial plant and the other service industries were not. This places the case within the decision of the Supreme Court of the United States in *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282 (1921).

In that case the plaintiff contended that the state statute in question violated the 14th Amendment when applied to interstate transactions. The state court held that the transaction in question was not in interstate commerce and consequently, sustained the validity of the state act. The case went to the Supreme Court of the United States on a writ of error. Objection was made to the jurisdiction of the court; it was insisted that the court could only review the case on a writ of certiorari. The court at pages 288 and 289 stated:

> "In the state court the plaintiff did not simply claim a right or immunity under the Constitution of the United States, but distinctly insisted that, as to the transaction in question the Kentucky statute was void, and therefore unenforceable, because in conflict with the commerce clause of the Constitution. The court did not accede to the insistence, but applied and enforced the statute. Of course, that was an affirmation of its validity when so applied. (Cases cited). *The case is therefore of the class described in the first of the provisions which we have quoted from the jurisdictional section. That the statute was not claimed to be invalid in toto and for every purpose does not matter. A statute may be invalid as applied to one state of facts and yet valid as applied to another.* (Cases cited). *Besides a litigant can be heard to question a statute's validity only when and so far as it is being or is about to be applied to his disadvantage.*

(Cases cited). *Neither does it ma on what ground the court upheld and enforced the statute. The provisions quoted from the jurisdictional section show that in cases where the validity of a state statute is drawn in question because of alleged repugnance to the Constitution the mode of review depends on the way in which the state court resolves the question. If it be resolved in favor of the validity of the statute the review may be on a writ of error; and if it be resolved against the validity the review can only be on writ of certiorari. The provisions take no account of the particular grounds or reasons on which the decision is put.*" (Emphasis supplied).

This law governing review of state court decisions by the Supreme Court of the United States on writ of error applies today to review by appeal. *Charleston Fed. Sav. & L. Assn.*, v. *Alderson*, 324 U. S. 182 (1944). Although the Pennsylvania Supreme Court stated that the plan of assessment was in accordance with the Federal Constitution, it did not specifically sustain the challenged Act in its written opinion. However, the Appellant challenged the constitutionality of the Assessment Law in the court of first instance (R. 5a-6a) and maintained such position through all of the Pennsylvania courts (Pages 9-28 of Appellant's Brief), and therefore, by sustaining the assessment, the Pennsylvania court necessarily sustained the validity of the Assessment Law of 1933.

Because of the greatly increased cost of operation, local governments in recent years have explored numerous and unique taxing methods for the purpose of raising additional revenue. In their zeal for expediency, traditional safeguards and rights are too often overlooked. It is now, under critical conditions, that the citizen must look to the Federal Government for protection. The questions presented by this appeal are substantial. By reason of the

discriminatory assessment, laundries are required to bear a disproportionate share of the cost of local government.

Conclusion

The North Side Laundry Company respectfully submits that it has been denied equal protection of the law by the Commonwealth of Pennsylvania and that under the law of the United States, the Supreme Court of the United States has jurisdiction to review on appeal the judgment of the Supreme Court of Pennsylvania.

MAHLON E. LEWIS,
Attorney for North Side Laundry Company.

APPENDIX "A"

IN THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT, MARCH TERM, 1951

No. 59

NORTH SIDE LAUNDRY COMPANY, a corporation, *Appellant*,

v.

BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW, ALLEGHENY COUNTY

Appeal from Order of the Superior Court at No. 168 April Term, 1950, Affirming the Order of the Court of Common Pleas of Allegheny County at No. 957 October Term, 1948.

OPINION OF THE COURT

Filed: March 19, 1951

DREW, *C. J.*

North Side Laundry Company, plaintiff, here questions the constitutionality of the action of the Board of Property Assessment, Appeals and Review of Allegheny County, in including in the triennial assessment of plaintiff's realty for the years 1948, 1949 and 1950 certain equipment used in the plant. The learned court below and the Superior Court upheld the action of the Board on the authority of our decision in *United Laund. v. Board of Prop. Assess.*, 359 Pa. 195, 58 A. 2d 833. Because of the importance of the questions involved, the Superior Court certified the case to this Court under the Act of June 24, 1895, P. L. 212, 810, for our consideration and decision.

In the *United Laundries* case, supra, this plaintiff and four other laundries contended that, under the Act of May

22, 1933, P. L. 853, 8201 as amended,[1] their equipment, consisting of washers, dryers, tumblers, pressers, ironers, etc., was improperly included as a part of the real estate in the triennial assessment made by the Board for the years 1945, 1946, and 1947. We there held that a commercial laundry was an industrial plant within the meaning of the "assembled industrial plant doctrine" and the equipment was, therefore, a part of the real estate subject to assessment under the Act of 1933. In assessing plaintiff's real estate for the years 1948, 1949 and 1950 the Board, following our decision in that case, again included the laundry equipment in the assessment and plaintiff again appealed, this time basing its argument on the rule laid down in *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352, that "intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property." See also *Iowa-Des Moines Bank v. Bennett*, 284 U.S. 239; *Sioux City Bridge Co. v. Dakota County, Neb.*, 260 U.S. 441. The soundness of that rule is patent but plaintiff has failed completely to bring itself within the scope of it.

At the hearing plaintiff offered to prove that the equipment of other "industries", such as theaters, cab companies, service stations, automobile repair companies, restaurants, stores, office buildings, hotels, beauty ships, banks, and self-service laundries, were not included in their assessment and that they, as well as plaintiff, are service industries. From that plaintiff concludes that there is a systematic undervaluation of other taxable property in violation of the constitutional guarantees contained in the 14th amendment of the Constitution of the United States and Article IX, § 1 of the Pennsylvania Constitution.

That argument is predicated in part on a misconception

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[1] "The following subjects and property shall, as hereinafter provided, be valued and assessed, and subject to taxation . . .: (a) All real estate, to wit: Houses, lands, lots of ground and ground rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, malt houses, breweries, tan yards, fisheries, and ferries, wharves, and all other real estate not exempt by laws from taxation . . ."

of our holding in the United Laundries case. We did not there hold that the personal property of a laundry is subject to assessment under the Act of 1933. What we did hold was that a commercial laundry is an industrial plant and hence that the equipment necessary to its operation is real estate within the meaning of the Act of 1933. Therefore, the fact that the businesses to which plaintiff referred are sometimes generically called "industries" is irrelevant to the issue here raised. The question is whether their establishments are industrial plants.

The answer to that question is self-evident. By no stretch of the imagination could a bank building, a hotel, a theater or any of the other business establishments referred to by plaintiff be considered an industrial plant. It is true that we sometimes speak of "the movie industry", "the hotel industry" or "the banking industry", but that is merely a loose use of language to convey that idea that the particular business is a sizeable one. In spite of that colloquialism, we do not speak of the buildings housing such businesses as "industrial plants." Plaintiff attempts to give to that phrase a legal meaning that goes far beyond anything that was contemplated by the Courts when they pronounced this rule and by the legislature when it adopted it in the Act of 1933. The law can do no better than to define an industrial plant as that type of establishment which the ordinary man thinks of as such. Certainly a commercial laundry comes within that definition but the other businesses here mentioned do not.

Plaintiff's last contention is that the assessment by the Board violates Article III, § 20 of the Pennsylvania Constitution, which prohibits the delegation of the power to levy taxes to "any special commission". It is the position of plaintiff that by applying the "assembled industrial plant doctrine", the Board is given the power to determine what personal property shall be taxed as real estate. This argument is equally without merit. The Board merely assesses all real estate included in the Act of 1933 and, as we have previously stated, the equipment in plaintiff's laundry is real estate within the meaning of that Act. Furthermore, we stated in *Suermann v. Hadley*, 327 Pa.

190, 201, 192 A. 645: " . . . in execution of the tax law and to permit the levy of the tax, a base on which it is to be applied is found by the assessing authorities in accordance with a standard fixed by the legislature. The finding of that base is purely an executive function delegated to a municipal agency."

The assessment by the Board is in accordance with the Constitution of the United States, the Pennsylvania Constitution and the Act of 1933. Plaintiff's appeal was, therefore, properly dismissed.

Order affirmed.

(5912)

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 163

NORTH SIDE LAUNDRY COMPANY,
Appellant,

vs.

BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW, ALLEGHENY COUNTY

APPEAL FROM THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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Statute Cited

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 163

NORTH SIDE LAUNDRY COMPANY, A CORPORATION,
Appellant,

vs.

BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW, ALLEGHENY COUNTY

APPELLEE'S STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The Board of Property Assessment, Appeals and Review of the County of Allegheny, Pennsylvania, appellee, pursuant to Rule 12, paragraph (3), of the Rules of this Court, makes the following statement disclosing matters and grounds making against the jurisdiction of this Court, asserted by appellant, and includes herein its motion to dismiss or affirm the judgment sought to be reviewed in this appeal:

(1) The decision of the Supreme Court of Pennsylvania in this case involves an interpretation of the Pennsylvania

statute governing the assessment of real estate for the purpose of local taxation. The decision reaffirms a prior decision of the Supreme Court of Pennsylvania (*United Laundries, Inc., et al.* v. *Board of Property Assessment*, 359 Pa. 195) involving the same appellant for a previous assessment period. Both the prior decision and the decision in this case hold that in the assessment of appellant's real estate under the applicable assessment statute, appellee Board properly determined that under the law of Pennsylvania appellant's real estate was an industrial plant and properly included the value of machinery and equipment in arriving at the assessment of such industrial plant as real estate. The decision in this case, as well as that in the prior case, is founded upon the settled decisional law of Pennsylvania interpreting and defining the term "real estate" as applied to an industrial plant as including all machinery and equipment in such plant essential to the operation thereof, referred to in Pennsylvania law as the "assembled industrial plant" doctrine.

(2) The decision in this case, as distinguished from the prior decision, holds that no violation of any federal right resulted from the fact that appellee Board did not include the value of machinery and equipment in other real estate enumerated by appellant, which, although termed "industries" by appellant, were held by the Supreme Court of Pennsylvania not to be industrial plants under the law of Pennsylvania, as above set forth.

(3) The Pennsylvania statute involved in this proceeding is the Act of 1933, P. L. 853, as amended, 72 PS 5020-201, et seq. Said statute provides for the assessment of *real estate* for the purpose of imposing local taxes based on such assessment. It is clear from the opinion of the Supreme Court of Pennsylvania in this case that the assess-

ment involved under the statute is not made the basis for an excise tax on "business" or "industry", and that it is not a tax assessment on "machinery and equipment" or on any other personal property. The inclusion of the value of machinery and equipment in the assessment of an "assembled industrial plant" under the statute arises by virtue of the meaning and definition ascribed to real estate under the settled decisional law of Pennsylvania.

(4) The determination of what constitutes real estate under state law by the highest court of that state is conclusive. Unless violative of Federal statute or interest, or discriminatory against such Federal interest, that determination will be binding upon the Supreme Court of the United States: *Defense Plant Corporation's Tax Assessment Case,* 350 Pa. 520, affirmed sub nom *Reconstruction Finance Corporation* v. *Beaver County,* 328 U. S. 204.

(5) The decision of the Supreme Court of Pennsylvania in this case, applying settled principles of the Pennsylvania law of real estate in the interpretation of the assessment statute under consideration is based on substantial non-Federal grounds and raises no Federal question: *Demorest* v. *City Bank Company,* 321 U. S. 36; *J. Bacon & Sons* v. *Martin,* 305 U. S. 380.

(6) Under the decisions of the Supreme Court of the United States the questions here raised by appellant have been decided adversely to its contentions: *Sunday Lake & Iron Company* v. *Township of Wakefield,* 247 U. S. 350; *Sioux City Bridge Company* v. *Dakota County, Nebraska,* 250 U. S. 441. The issue was so decided on strikingly similar grounds in *Armour Packing Company* v. *Lacey,* 200 U. S. 227.

WHEREFORE, appellee respectfully moves the Court to dismiss the appeal herein or to affirm the judgment of the Supreme Court of Pennsylvania.

BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW OF ALLEGHENY COUNTY, PENNSYLVANIA,
By NATHANIEL K. BECK,
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FILED
JUL 7 1951
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

NO. 163.

NORTH SIDE LAUNDRY COMPANY, a Corporation,
Appellant,

v.

BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW, Allegheny County, Appellee.

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM.

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BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM.

OPINION OF THE COURT BELOW.

The Opinion of the Supreme Court of Pennsylvania is attached as Appendix A to the jurisdictional statement heretofore filed and is officially reported at 366 Pa. 636.

JURISDICTION.

The jurisdiction of this Court is set forth in Appelpant's Jurisdictional Statement heretofore filed.

STATEMENT OF THE CASE.

The essential facts of the case are stated in the Appellant's Jurisdictional Statement heretofore filed.

SPECIFICATION OF ERROR.

The errors complained of are set forth in Appellant's Assignment of Errors heretofore filed.

SUMMARY OF THE ARGUMENT.

Appellant asserted throughout the State Courts that the Taxing Act of 1933, as construed by the Pennsylvania Courts, violated the equal protection clause of the 14th Amendment. The Supreme Court of Pennsylvania upheld the validity of the Pennsylvania Act. Therefore, the Court necessarily decided a federal question.

The federal question is substantial because the Act, as construed, taxes the personal property in Appellant's laundry and does not tax the personal property of the same class in other service businesses. A State statute which, as construed by the State Court, taxes the personal property of a laundry as real estate by virtue of the Assembled Industrial Plant Doctrine and fails to tax the personal property of other service businesses equally susceptible to the Assembled Industrial Plant Doctrine violates the equal protection clause of the 14th Amendment.

ARGUMENT.

1. A Federal Question Is Involved in This Appeal.

The Appellee's Motion to Dismiss or Affirm represents that the decision of the Supreme Court of Pennsylvania, from which this appeal was taken, is based upon substantial state grounds and raised no federal questions; that the Supreme Court of Pennsylvania was called upon to determine what was real estate within the County Assessment Law; that the Supreme Court of Pennsylvania upheld an assessment of Appellant's real estate; and that such determination is binding upon the Supreme Court of the United States.

This is not the case.

For the triennial 1948, 1949 and 1950 the Allegheny County Board of Property Assessment, Appeals and Review assessed the Appellant's machinery and equipment at $25,950. (R. 6 & 7). The Board assessed Appellant's land and buildings at $29,065. To determine Appellant's County tax, the County Authorities added the assessment of Appellant's machinery and equipment to the assessment of its land and buildings. The "machinery and equipment" was assessed separately from the land and buildings. By Act of the Pennsylvania Legislature assessments for the City of Pittsburgh and the County of Allegheny are made by a single Board—the Board of Property Assessment, Appeals and Review. Act of June 15, 1939, P. L. 346 (53 P. S. 8774). This Act provides that the Board of Property Assessment, Appeals and Review shall assess all taxable property and designate on its list that property not taxable by the City.

Although the County is permitted by an Act of Legislature (which Appellant challenges) to tax certain machinery, the City of Pittsburgh *is denied the right to tax machinery.* Act of 1901, P. L. 20, as amended by the Act of 1911, P. L. 287 (53 P. S. 9634). Therefore, the Board includes the value of machinery in assessments made for the County of Allegheny, but does not include the value of machinery in assessments made for the City of Pittsburgh, although the Board is assessing the identical property for tax purposes.

The assessment here complained of was made by the Board under the Act of 1933, P. S. 853, as amended by the Act of 1941, P. L. 219 (72 P. S. 5020-201) which provides:

> "The following subjects and property shall, as hereinbefore provided, be valued and assessed and subject to taxation* * * (a) All real estate to wit: Houses, lands, lots of ground, rents, mills and manufactories of all kinds, furnaces, forges, bloomeries, distilleries, sugar houses, meat houses, breweries, tan yards, fisheries and ferries, wharves, and all other real estate not exempt by law from taxation* * *."

In the triennial 1945, 1946 and 1947, the Board taxed the Appellant's machinery and equipment. It assessed the machinery and equipment and added this sum to the assessment for the land and buildings. To Appellant's objection the Board argued that a laundry was a "mill or manufactory" within the Act of 1933, *supra,* and that the machinery in a mill or manufactory was taxable because it would not be a mill or manufactory without the machinery and equipment. The Supreme Court of

Pennsylvania (359 Pa. 195, 1948) held that the Appellant's laundry was not a mill or manufactory but upheld the tax on the machinery by placing the laundry within the classification of the Act "all other real estate."

It was the Court's reasoning that the value of the land and building was enhanced by the machinery and equipment and by virtue of the Pennsylvania so-called Assembled Industrial Plant Doctrine, the machinery and equipment should be taxed as all other real estate. But in fact this was not an assessment of real estate and the Board never considered it an assessment of real estate. It was in fact an assessment of machinery and equipment which the Board, the County of Allegheny, the City of Pittsburgh and the Pittsburgh School District all considered as an assessment of machinery and equipment. The City of Pittsburgh and the Pittsburgh School District did not tax the machinery and equipment. Allegheny County taxed the machinery and equipment of Appellant's laundry, and the Supreme Court of Pennsylvania upheld this action by saying the machinery and equipment of the laundry was "all other real estate" within the Act. No federal question was raised and an appeal to this Court was not allowed.

When the Board assessed Appellant's machinery and equipment for the triennial 1948, 1949 and 1950, the Appellant charged that the Act of 1933, *supra*, as construed by the Pennsylvania Supreme Court violated the equal protection clause of the 14th Amendment to the Federal Constitution because similar machinery and equipment of other service businesses was not taxed (R. 5 & 30). This federal right was asserted by the Appel-

lant throughout the Pennsylvania Courts and each Court in turn necessarily passed upon the federal question. The Supreme Court stated that "The assessment by the Board is in accordance with the Constitution of the United States * * *." (R. 54). Appellee's assertion that there is no federal question raised is without a basis in law or fact.

The question decided by the Pennsylvania Courts and raised by this appeal is not *"What is real estate under the law of Pennsylvania?"* The question before this Court is *"Does the Pennsylvania County Assessment Law of 1933, as construed by the Supreme Court of Pennsylvania violate the equal protection clause of the 14th Amendment?"*.

In its Motion to Dismiss or Affirm the Appellee has relied upon the decision of this Court in the case of *Reconstruction Finance Corp. v. Beaver County,* 328 U. S. 204 (1945). The question presented in that case was whether the machinery in a government owned manufacturing plant could be taxed by Pennsylvania as a "manufactory" within the Act of 1933. The decision of this Court, in upholding the tax, has no bearing on the instant case because here an entirely different classification of the taxing act is involved.

2. The Federal Question Is Substantial.

The Act of 1933, *supra,* creates classifications for tax purposes. One of those classifications is "all other real estate." The Supreme Court of Pennsylvania has held that the machinery and equipment of the North Side Laundry Company (personal property unattached to the freehold) is taxable under this classification of the Act. The Court purported to justify the taxing of this personal property by declaring a laundry to be an industrial plant, but it is of little moment what the Court wants to call a laundry so long as it held that it did not fit the other business classifications in the Act. Appellant's complaint is that the Court held the laundry's machinery taxable as all other real estate and refused to let Appellant show that this was discriminatory.

It is true that the State has the power to classify for tax purposes, but arbitrary selection has never been considered classification. This Honorable Court has stated in the case of *Ohio Oil Co. v. Conway,* 281 U. S. 146 (1930), at page 160:

> "The State may classify broadly the subjects of taxation; but in doing so it must proceed upon a rational basis. The State is not at liberty to resort to a classification that is palpably arbitrary. The rule is generally stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' (Cases cited)."

The Pennsylvania Court has not held that the machinery in the laundry is real estate. To do so would be

ridiculous in view of the fact that the machinery consists of ironers, washers, tumblers, pressers, etc.,—strictly personal property unattached to the freehold. What the Court did hold was—by virtue of the so-called Pennsylvania Assembled Industrial Plant Doctrine, the machinery in the laundry was taxable within the classification of the Act "all other real estate."

The so-called Pennsylvania Assembled Industrial Plant Doctrine is a protective device used by the courts to foster industrial mortgages.

The Supreme Court of Pennsylvania in the case of *Ross v. Fairy Silk Mills,* 334 Pa. 305 (1939), at page 308 spoke of the "doctrine" as follows:

> "Due to the demands and requirements of our changing economic order, we early developed in this state the principle of an 'industrial mortgage' which included, as part of the freehold, personal property in and about a manufactory. This principle became more important as our industrial life expanded, so that the necessary credits to sustain and finance manufactories and other like industries could be obtained with some degree of certainty that the security offered would be continued. Therefore, it was held that where premises were used in manufacturing or a similar industry, the real estate and personal property necessary to the plant as a going concern were subjected to the lien of an industrial mortgage. This opened the way for persons interested in such industries to assure investors in a manufactory not only of a stable security for money loaned on the plant, but one that could not be broken down and destroyed by selling it piecemeal."

This doctrine has been extended to apply to office buildings, *Medical Tower Co. v. Otis Elevator Co.*, 104 F. 2d 133 (C. A. 3, 1939), apartment houses, *Land Title Bank & Trust Co., v. Stout*, 339 Pa. 302 (1940), and private dwellings, *Holland Furnace Co. v. Suzik*, 118 Pa. Sup. Ct. 405 (1935). In the instant case the Pennsylvania Supreme Court arbitrarily applied this doctrine to justify the taxing of laundry machinery and equipment and held that the machinery and equipment was taxable as "all other real estate" even though the refused evidence disclosed that the machinery and equipment of other service industries was not being taxed under the doctrine.

At the Trial Court Appellant offered to prove that personal property of the same class as Appellant's machinery was not taxed as "all other real estate." (R. 14-28). The trial court excluded the evidence offered by Appellant on the grounds that it was incompetent, irrelevant and immaterial. The Appellant's case in this Court is—*A state statute, which, as construed by the State Court, taxes the personal property of a laundry as real estate by virtue of the Assembled Industrial Plant Doctrine and fails to tax the personal property of other service businesses equally susceptible to the Assembled Plant Doctrine violates the equal protection clause of the 14th Amendment.*

The Pennsylvania Courts rejected Appellant's claim of discrimination and excluded the evidence offered by the Appellant (R. 14-28) on the ground that the personal property in Appellant's offer, which was not taxed, was of a different class than the machinery in Appellant's laundry. Appellant respectfully submits that such a classification is "palpably arbitrary" and without a "rational basis."

The classification created by the legislature is "all other real estate." The Supreme Court of Pennsylvania has broadened this classification to include *personal property of Appellant's laundry* by virtue of the Assembled Industrial Plant Doctrine.

The Act, as construed by the Court, taxes the washing machines in Appellant's laundry and does not tax the washing machines in self-serving laundries.

The Act, as construed, taxes sewing machines which are used to replace buttons on laundered clothes in Appellant's laundry and does not tax the sewing machines in clothing stores, necessary for the alteration of clothes.

The pressers in Appellant's laundry are taxed while identical pressers in hotels are not taxed.

Dish washing machines, ice boxes, deep freezes and other equipment necessary for the operation of restaurants are not taxed while the machinery necessary for the operation of Appellant's laundry is taxed.

Motion picture machines, projectors, sound machines and other equipment necessary for the operation of a theater are not taxed while the machinery necessary for the operation of Appellant's laundry is taxed.

Lathes, pressers, jacks, compressors and other equipment necessary for the operation of automobile repair businesses are not taxed while machinery necessary for the operation of a laundry is taxed.

There are numerous other service businesses containing machinery and equipment necessary for their

operation, which machinery is likewise not taxed. (R. 14-28).

There is no rational basis for the discrimination between Appellant's machinery and the machinery of the other service businesses which is not taxed.

A laundry is a service business. The businesses enumerated in Appellant's offer are also service businesses. The machinery in Appellant's laundry which is taxed is personal property unattached to the freehold. The machinery in the other service businesses not taxed is personal property unattached to the freehold. The machinery in Appellant's laundry which is taxed is essential to the operation of a laundry. The machinery in the other service businesses not taxed is essential to their operation. *What is the difference between the pressers in Appellant's laundry and the identical pressers in hotels and clothing stores? What is the difference between the sewing machines in a clothing store and the sewing machines in a laundry? What is the difference between the jacks, compressors and lathes in an automobile repair shop and the machinery in Appellant's laundry? What is the difference between the washing machines in Appellant's laundry and the washing machines in self-serving laundries?*

The Supreme Court of Pennsylvania construed the Act to tax the machinery of the laundry as all other real estate by holding that the machinery was essential to the laundry's operation. The Supreme Court affirmed the Trial Court's Order excluding the evidence offered by Appellant, which evidence would show that the machinery essential to the operation of the other service

businesses was *not* taxed, although personal property of the same class as Appellant's machinery.

Appellant submits that such discrimination violates the equal protection clause of the 14th Amendment and such action by the States has been repeatedly struck down by this Court. *Sunday Lake Iron Co. v. Wakefield Twp.*, 247 U. S. 350 (1917); *Sioux City Bridge Co. v. Dakota Co., Neb.*, 260 U. S. 441 (1923); *Cumberland Coal Co. v. Board of Tax Revision*, 284 U. S. 23 (1931); *Concordia Fire Ins. Co. v. Ill.*, 292 U. S. 535 (1934)

Conclusion.

Appellant instituted this appeal from the Assessment for 1948, 1949 and 1950 for the sole purpose of litigating the federal question From the very nature of the case as presented the Pennsylvania Courts necessarily decided a federal question. There is no adequate state ground to support the decision.

The federal question presented is substantial. The Pennsylvania Act of 1933, as construed, taxes the personal property of Appellant's laundry and does not tax personal property of the same class in other service businesses.

For these reasons Appellant requests that Appellee's Motion to Dismiss or Affirm be denied and that the judgment of the Supreme Court of Pennsylvania be reversed.

Respectfully submitted,

MAHLON E. LEWIS.

Ecced

No. 163. NORTH SIDE LAUNDRY CO. *v.* BOARD OF PROPERTY ASSESSMENT, APPEALS AND REVIEW, ALLEGHENY COUNTY. Appeal from the Supreme Court of Pennsylvania. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for the want of a substantial

federal question. *Mahlon E. Lewis* for appellant. *Nathaniel K. Beck* and *Leonard Boreman* for appellee. Reported below: 366 Pa. 636, 79 A. 2d 419.